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ED: Some Relevant Hearing
Decisions

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Recurrent Issues in Hearings

- Placement (special class, day treatment, private school, residential)
- Eligibility (ED vs. or + AU, ADHD, LD)
- Evaluation in all areas of disability
- Timeliness of evaluations (e.g., suspicion of disability)
- IEEs
- Discipline (MDR); FBAs and BIPs
- Consideration of all evaluations/previous data in the FIE

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Program vs. FIE

- IDEA creates a presumption favoring an education plan proposed by a school district and places burden of proof on Petitioner challenging the plan
 - The school district's plan is presumed to be appropriate
- FIE is not afforded such a presumption; if parent disagrees, must go to hearing to show that it is appropriate

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310-SE-0810 (2011)
George West ISD

- Student was receiving services under AU (due to diagnosis of Asperger's Disorder)
- Reevaluation determined ED not AU; Student also identified as LD in Math and Written Expression (this not under dispute)
- Parent requested IEE and district granted it
- IEE concluded AU

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310-SE-0810 Discussion

- ... IDEA charges a school with the responsibility of developing an appropriate education, not with coming up with a proper label...dispute over eligibility classification where student continues to be eligible for special education is a procedural matter and parent must prove that change in eligibility status resulted in cognizable harm to student ...

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310-SE-0810 Discussion

- Parties agree that anxiety, depression, inattentiveness, and social skills deficits present and adversely affect student's educational performance. Origin of these is the issue. Parent sees it as AU, School sees it as ED
- ...In this case it is important to determine whether the evidence taken as a whole establishes that Student's education is adversely affected primarily by an emotional disturbance in order to assess if autism applies.

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310-SE-0810 Discussion

- Remember, IDEA specifically states that AU does not apply if student's educational performance is adversely affected primarily because of ED
- Hearing officer decides *preponderance of the evidence* supports district's *determination that Student is more properly characterized as eligible on the basis of ED than AU*

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310-SE-0810 Discussion

- *When measured against Dr. *** evaluation, which included information from Student, Parent, eight (8) teachers over two school years, and ratings on multiple nationally normed assessment measures, Dr. *** evaluation falls short of offering data that is as reliable, consistent, and determinative as that found in Dr. *** evaluation.*

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310-SE-0810

- IMPLICATIONS:
 - Very Comprehensive FIE (multiple sources of data across multiple informants)
 - Addressed all areas of suspected disability with appropriate instruments (AU and ED)
 - Can view same types of characteristics from different perspectives; Data must support decision
 - Here FIE was found "reliable" and "determinative"

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048-SE-1010 (2011) Banquette ISD

- Student transferred from another district: AU, SI
- Same LSSP who evaluated in 2007 conducted the reevaluation in 2010; LSSP who conducted the reevaluation indicated that both evaluations were valid, but more data available over the course of three years – student had a different presentation at time of reevaluation
- Reevaluation concluded not AU; LD, ADHD, SI
- Parent disagreed, requested IEE, & IEE concluded AU. Parent refused for private evaluator to obtain data from the school; IEE evaluator observed student on last day, administered ADOS, obtained information from 1 teacher

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048-SE-1010

- *The parent's limitations on the evaluator undermine confidence in her report. A school district is obligated to augment parentally provided information to determine the student's eligibility and to develop an appropriate IEP...The parent may not prospectively limit the scope of the District's chosen assessment strategies as a predicate to granting consent...*

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306-SE-0813 (2013) Houston ISD

- Identified ED
- Re-Evaluated (REED) and continued ED
- 8/2011 – withdrew from HISD; 11/2011 - enrolled in non-HISD affiliated charter school; 9/2012 – left charter school; homeschooled for 2012-2013
- 9/2013 –reenroll in HISD; district knows its re-eval is out of timelines so gets parental consent and begins evaluation

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306-SE-0813

- IQ, Achievement, Rating Scales, Emotional/Behavioral Assessment
- BUT, parent does not provide updated sociological information. HISD says evaluation cannot be completed without this due to rule-out factors.
- *...school district's inability to complete the evaluation was due to a lack of parental cooperation...*
- Parent request for IEE denied as district did not complete their evaluation

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- IMPLICATIONS:
 - Data-based problem-solving: can change your decision based on data; thoroughly review why previous decision was valid and why current decision is also valid
 - Be careful not to have scope of evaluation limited; do not make decisions based on limited information

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139-SE-0211 (2011) Birdville ISD

- Initial evaluation
- Student in private school
- Kicked out of 2 daycare facilities based on aggressive and explosive behaviors
- Entered a psychiatric day treatment program; diagnosis of Unspecified Episodic Mood Disorder and prescribed Risperdal. Discharged and told to contact -ISD for assistance

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139-SE-0211

- Enrolled in a therapeutic summer program
- -ISD conducted evaluation in the summer
- Team – SLP, DIAG, LSSP
- LSSP observed student in assessment – excellent communication skills, transitioned appropriately, engaged with evaluators, happy and even disposition
- BASC-2 – many clinically significant areas

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139-SE-0211

- *LSSP found the *** responses to be more severe than warranted, challenging their reliability and discounting their impact*
- Parents completed SSRS – did not complete the Social Skills subscale. *The LSSP should have followed up with the Parents in completing this assessment.*
- *LSSP determined ... Student did not manifest a mood disorder & evaluation did not indicate ED; student's behaviors were typical for seeking to obtain or trying to escape something*

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139-SE-0211

- In conducting the FIE, the LSSP did not
 - contact the student's psychiatrist or psychologist
 - observe in the educational setting or at home
- Other omissions in the FIE – no IQ test, no FBA, no OT assessment – none of these omissions rendered the FIE inappropriate
- Private psychological evaluation obtained; Unspecified Episodic Mood Disorder; psychiatrist testified student is ED; psychiatric evaluation and psychological evaluation consistent

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139-SE-0211

- *The evidence supports that student is ED; in the area of the psychological assessment, the FIE was not appropriate*
- *District failed to provide Student's Parents with the Disability Report at the time of the June 2010 ARDC meeting...District destroyed copies of certain test protocols following the June 2010 FIE...District located the test protocols a week prior to the hearing.*

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139-SE-0211

- *It is certainly understandable that there is reluctance to label a *** year old child ED...It cannot however form any basis for denying the reality of the glaring "red flags" presented in the evaluation process...*
- *The psychological assessment is inappropriate on multiple grounds: 1) it fails to give due credence to Student's behavioral history, which unbelievably consisted of dismissals from ***, psychiatric services, and the need for Risperdal, all at the age of ***;*

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139-SE-0211

- *2) it discounts the results of its own instruments that manifested extreme maladjustments as well as a two-year gap in Student's social/emotional test while concomitantly showing average ability in all other areas; and 3) it ignores the referral from *** which included a very serious psychiatric diagnosis, as well as the reports and comments of Student's prior teachers and his Parents explaining the depth of his outbursts and his inability to control himself or be easily controlled.*

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139-SE-0211

- IMPLICATIONS:
 - Young kids can have the ED classification and behavioral history is a major factor in such determination
 - Talk to external service providers
 - Observe in settings
 - If you believe that scales are “too” elevated, must have other sources of data to show this (must have data to ?data)

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074-SE-1210 (2011) Highland Park ISD

- Student transferred to -ISD; SI
- Numerous evaluations conducted
- FIE 1:
 - Used cross-battery, not LD; Remove SI; Parent disagreed.
 - IEE-LD Written Expression; also led to Pediatrician evaluation and ADHD diagnosis
- Psychiatric evaluation – ADHD, Depression and Anxiety

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074-SE-1210

- ARD on FIE 1
 - said not LD due to no processing deficit in both district FIE and IEE
 - Agreed to do additional evaluation for ADHD/OHI
- FIE 2 –
 - LSPP concluded no ADHD, but Index was significant and Dr. *** failure to mention the probability scores from the Conners' ADHD Index resulted in an incomplete and inaccurate reporting of the Conners' results
 - FIE also noted no further testing for ED warranted
 - Observations – on-task 95-100% of the time

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074-SE-1210

- CPT-2 – 72.6% clinically significant problem exists
- Interpretation minimized CPT-2 results (said several scores in average range and only a few atypical scores)
- Attention-Concentration WRAML – average
- ****concluded that Student's ADHD as diagnosed by student's psychiatrist and pediatrician was not corroborated by her testing.*

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074-SE-1210

- *In reaching this conclusion, Dr. *** minimized the breadth of information indicating Student's ADHD, such as reports from student's teachers, parent, psychiatrist, pediatrician, ***IEE, and *** own testing on the CPT-2 and Conners*
- ARD for FIE 2 – conducted without parent
- Parent disagreed with FIE 2 – requested IEE – District denied request and filed for hearing

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074-SE-1210

- Additional psychological evaluation done after ARD on FIE 2 – the psychologist said 2 major problems with FIE 2 – results suggested ADHD and Dr. *** ignored huge red flags for ED
- Private Psychological Evaluation – Diagnosed ADHD, Major Depressive Disorder, Anxiety Disorder, Mathematics Disorder, Disorder of Written Expression, and Dysgraphia – said student meets categories of LD, OHI, and ED

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074-SE-1210

- Neuropsychological Evaluation – tested student just prior to the hearing; confirmed ADHD and LD
- Teacher interview notes as summarized in FIE 2 – differences existed between the written report or raw data and the FIE's report of the data (e.g., very withdrawn vs. somewhat withdrawn) – reporting *minimized Student's emotional difficulties*

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074-SE-1210

- FIE 2 *failed to accurately and fully report all relevant data and failed to assess in all areas of suspected disability*
- Student not LD – does not have a disorder in one or more of the basic psychological processes
- Student is *OHI* based on *ADHD*
- Student is *ED*

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074-SE-1210

- *When reviewing FIE #2 as a whole, I cannot conclude that the data was purposely misrepresented to dictate the outcome of the assessment as argued by the Student. I do find, however, that the cumulative effect of the failures in reporting data undermines the overall validity of the evaluation and thus the certainty of the ARDC's determination that Student did not have ADHD and/or did not*

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074-SE-1210

- *need special education and related services. This is particularly true because each of the reporting errors went in one direction – toward minimizing Student's level of disability or need in the classroom. Had the omissions or decisions made by *** about how to report or characterize the data gone in both directions, their impact would not have been as significant. ... issues affected the accuracy and validity of FIE #2 ... renders the evaluation inappropriate under IDEA.*

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074-SE-1210

- IMPLICATIONS:
 - Not our job to prove or disprove clinical diagnoses
 - Rating scales yield much information and "probable" diagnoses – are we supposed to follow-up each one?
 - This looks like a very thorough evaluation – what happened?

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331-SE-0812 (2012) Arlington ISD

- *The difficult aspect of this case is the starkly different picture painted of Student by student's *** and the school staff.*
- *Data from assessment measures not solely dependent of reporting by either the *** or school staff do not indicate the presence of ... I weigh these testing measures heavily in making the determination of whether Student has ...*

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331-SE-0812

- *I find the results and conclusion of FIE #2 to be more balanced and credible than those of the IEE. The IEE relies heavily on information obtained from *** and discounts or ignores the data obtained from school staff...In contrast...FIE#2 took into account data obtained from both *** and school sources...In explaining the discrepant data...*

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139-SE-0112 (2013) Lewisville ISD

- ED not AU
- *The district's evaluation is more substantial, thorough, and credible than those of **** [IEE had been done by 2 Ph.D. psychologists]
- District evaluation – more assessment, observation by school personnel, analysis from teachers and other professionals who worked extensively with the student, parent observation/ratings included as part of evaluation

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IMPLICATIONS

- When data are discrepant, present a balanced view of both
- Make sure that you have a substantial data set from the student him/herself (e.g., direct observations, self-report measures, specific situations to observe certain characteristics, interviews, ...)

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253-SE-0613 (2013) Beaumont ISD

- *The district's FIE only consisted of a speech evaluation. The District did not assess the student in all areas...*
- IMPLICATION:
 - Assess in all areas of suspected disability means just that. An FIE is an FIE not just one component of it.

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074-SE-1112 (2013) Houston ISD

- *In finding that Student did not need special education services in May 2012, The ARDC focused only on the academic and behavioral progress Student made during the 2011-2012 school year and failed to take into account Student's educational program and the extensive supports student required in order to obtain that progress...the ARDC failed to recognize that the FBA documented the **success** of the Student's interventions rather than the **need** for them.*

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074-SE-1112

- *LSSP ... specifically noted throughout the assessment that Student's behavior was assessed with the support of extensive interventions, modifications, and supports.*
- IMPLICATION:
 - We need to describe interventions currently in place when we are conducting our evaluation, especially if student is receiving 504 support or Tier 2 and 3 support. The extensiveness of these interventions have an impact on our decision regarding the presence of a disability condition.

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032-SE-1012 (2013)
Carrollton-Farmers Branch ISD

- *...private evaluation...At the hearing, Dr. *** admitted that he changed his written report at the request of the Parent to include a suspicion of AU in a second version of his written report after concluding in his first version that there was no need for an AU evaluation or special education services. I find it troubling at best that Petitioner's expert made such a change...Further, the changed*

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032-SE-1012

- *Second version of the evaluation report... includes no results and/or scores from on of Dr. *** evaluations...no other reports or measures of the Student's self-view of school functioning...the results reported by the *** grade teacher included...a mixture of the *** grade teacher's perceptions as well as the Parent's perceptions. *** had only taught the student five weeks...includes no input from the*

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032-SE-1012

- *Student's *** grade teachers who had taught student an entire year, no observation of Student...and no thorough review of school records... general ADD/ADHD recommendations ...are general recommendations for students with ADD/ADHD and are not individualized for the Student. For all these reasons, I do not find this evaluation persuasive and do not accord weight to the changed written report...*

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032-SE-1012

- IMPLICATIONS:
 - Obvious – do not change things per parent request
 - This decision mentions practices such as review of records, observations, and self-report that should have been included
 - For cases where the teacher has not had much experience with the student, obtain data from previous school year(s)

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147-SE-1013 (2014) Bishop ISD

- District had knowledge of need for a psychological evaluation at the time of FIE.
 - Student was receiving homebound services for excessive anxiety...Parent had provided detailed information about psychological diagnoses
- District obtained consent for FIE
- Notice of Assessment gave notice that district intended to provide a psychological assessment; Parent signed consent

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147-SE-1013

- *Evidently, the diagnostician believed that TEC§29.0041 applied to this situation and required additional consent...however nothing in the record indicates that the Parent requested additional information to trigger the applicability of 29.0041*
- *In sum, Student's known needs required a psychological evaluation as part of the District's FIE. The record supports that the District had consent from the Parent to conduct the evaluation, but failed to do so. In the alternative, if the District did not have the necessary consent, the record reflects that the District failed to make reasonable efforts to obtain consent...*

147-SE-1013

- IMPLICATION:
 - Consent for FIE, when the conducting of a psychological evaluation has been clearly identified as a component of the FIE, is consent for the psychological evaluation
